

OVERVIEW OF THE COURT OF COMMON PLEAS MEDIATION PROGRAM

The Court of Common Pleas Mediation Program begun in 2001, serves as an alternative dispute resolution (“ADR”) resource for the Court. This program provides a way for litigants to resolve disagreements without the necessity of a trial. The program is managed by the Mediation Officer, who oversees mediations for criminal, civil, disputed restitution and community cases.

MEDIATION IN GENERAL

The mediations are voluntary and the information discussed during the process remains confidential. The sessions are facilitated by a trained mediator, who attempts to fairly resolve the dispute and satisfy the needs of the participants. All participants are given an opportunity to express their feelings about the case and the facts as they see them. The mediation offers the parties a safe forum for reviewing options and enables the parties to develop their own settlement terms in a mutual agreement.

The mediator's role is to clarify misunderstandings and ambiguities, to provide a new perspective on disputed issues, and to explore options for mutual agreement. It is in the participants' best interest to use an impartial, trained mediator to help conduct focused, amicable settlement negotiations to avoid the time, expense and risk of litigation.

All parties must agree to mediation and be present for the mediation conference. Before the mediation conference begins, the parties and the mediator must sign a written consent to the mediation. The Agreement to Mediate declares the confidentiality of the mediation conference and states the rights and obligations of the parties.

The mediation conferences are informal proceedings. The mediator will assist the parties to reach a mutually acceptable resolution of their dispute through discussion and negotiation. The mediator is not permitted to impose a decision or any penalty upon the parties. The mediator may terminate the conference if parties are unable to agree. The termination will be without prejudice to either party in any other proceeding. If the parties reach a settlement, the Mediation Agreement is signed by all the parties and the mediator. The Agreement sets forth both the settlement of issues and the future responsibilities of each party. Once signed, the Agreement is binding.

PENDING COURT CASES

CRIMINAL CASES

Mediation is available through the Court's mediation program for criminal cases. In these cases, criminal misdemeanor charges have been filed and are pending in the Court of Common Pleas. If the case is successfully mediated, a *Nolle Prosequi Without Prejudice* disposition is entered and the charge(s) are dropped.

For criminal cases, the Mediation Officer reviews the Court's calendar to determine eligibility. Cases are also referred to the Mediation Officer by Judges, the Deputy Attorney General on behalf of the Department of Justice, the Assistant Public Defenders, private attorneys, and the parties themselves. Once a case has met the criteria for mediation, the case is referred to one of two non-profit agencies for scheduling - the Center for Community Justice ("CCJ") and the Delaware Center for Justice ("DCJ"). **The case remains on the regularly scheduled event calendar and the parties must attend all scheduled court hearings while mediation is attempted.** If mediation is not successful, the case will proceed with criminal prosecution.

DISPUTED RESTITUTION

In addition to pending criminal matters, the mediation program handles cases after a criminal defendant has pled guilty or been found guilty of a crime and restitution has been ordered as part of the sentence. The Court's Investigative Services Office determines the amount of restitution owed. If either party disputes the amount or the nature of the restitution, a mandatory mediation hearing is scheduled. This reduces the number of restitution hearings that are scheduled to be held before a judge.

CIVIL CASES

The Court of Common Pleas also offers mediation in civil cases. If the litigants wish to mediate a civil case, they simply check the Mediation option on the Case Information Statement, which is filed with the Complaint. Mediation may also be requested on the Case Management Worksheet, which is mailed to the litigants after the last responsive pleading has been filed. Provided both parties agree to mediation, the case will be scheduled. Mediation has been very beneficial for these types of cases. Aside from saving time and money compared to litigating the matter, the mediation process allows the parties the ability to creatively structure an agreement that is mutually satisfying.

Mediation is a process and not all civil cases settle at the initial mediation session. The Mediation Officer will continue to work with the parties to help facilitate a settlement agreement. If the parties do not reach a settlement after the initial mediation session, the case will be scheduled for trial.

COMMUNITY CASES

The Court of Common Pleas mediation program also handles Community Cases. These are matters where the parties are having a dispute, but neither criminal charges nor civil litigation have yet been filed. These cases are often referred to the program by an investigating police officer.

Since the program began in 2001, over 4,400 cases have been referred to mediation and the program currently has an 87% success rate.

For more information, contact the Mediation Officer:

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